

**PERSONAL SERVICES CONTRACT  
UNDER STATE TERM SCHEDULE NUMBER 533808-0  
Secretary of State Contract Number 06-337**

This Agreement is between the **Office of the Ohio Secretary of State** (hereinafter the "Secretary"), located at 180 E. Broad Street, 16th Floor, Columbus, Ohio 43215, and **GovTech Solutions, LLC**, an Ohio limited liability company, with offices at 302 North Cleveland-Massillon Road, Akron, Ohio 44333 (hereinafter "Contractor") (Secretary and Contractor each referred to herein as a "Party" and collectively as the "Parties").

**RECITALS**

WHEREAS, Secretary currently maintains an election night system; however, the current system requires an updated Oracle based content management tool and customer facing presentation layer (hereinafter the "Application").

WHEREAS, Secretary wishes to update it's Application with a browser based and user friendly interface that does not require the installation of software on the end-user's machine.

WHEREAS, Contractor is in the business of providing Internet World Wide Web development, programming and related services, including technical and creative services;

WHEREAS, Secretary wishes to retain the services of Contractor to perform certain Application planning and design related services, including, providing technical and creative services in connection with the development of the new interactive Election Night Web site as described more fully herein; and

WHEREAS, Contractor wishes to provide Secretary with such services;

THEREFORE, the parties, for good and valuable consideration and based on the mutual promises recited herein, do agree as follows:

**Article I. STATE TERM SCHEDULE**

**1.01** This Agreement is entered into under the authority of State Term Schedule **533808-0** (the "STS") and incorporates by reference the Terms & Conditions of the STS.

## **Article II. DEFINITIONS**

**2.01 “Acceptance” or Accepted**” when used in this Agreement means signoff by the Secretary for Contractor’s completion of either the Planning Phase or Application Design Phase.

**2.02 “Application”** shall mean the updated content management tool and customer facing presentation layer over the Secretary’s current election night system.

**2.03 “Application Design”** shall mean the Application Look and Feel of the User Interface including the general workflow that the end-user would experience. Application Design must take into consideration the Secretary’s Election Night Database and systems in development of the Application Design.

**2.04 “Look and Feel”** shall mean the general appearance and operation of the Application Web site.

**2.05 “Election Night System”** shall mean the Secretary’s Election Night System comprised of the front-end, customer facing presentation layer, administrative content management interface and supporting databases.

**2.06 “Election Night Database”** shall mean the Secretary’s Election Night Database that is a component of the Secretary’s Election Night System.

**2.07 “Planning Phase”** shall mean the initial phase during which Contractor performs basic research in consultation with the Secretary to establish the information base for the creation of the Application Design.

**2.08 “Planning Phase Deliverables”** shall mean those items described below which Contractor commits to provide to Secretary at the completion of the Planning Phase:

(a) A written description of the “Scope of Work” that describes the Project idea, time frame, constraints, and available resources;

(b) A written description of the “Requirements” that describes the high-level business requirements for the application;

(c) A written description of the “Functional Specifications” that describes in detail how the Requirements will manifest in the Application; the Functional Specifications may include screen shots, process flows, and other resources to assist in communicating the expected behavior of the Application;

(d) A written description of the “Project Plan Schedule” for the design phase containing the detailed work items, resources, relationships, and timeline for building the Application. The plan should also include plans for testing and application evaluation, as well as escalation and disaster recovery plans.

**2.09 “Project”** shall mean the undertaking by Contractor to work with Secretary to develop an Application Design for Secretary’s Election Night Application, that is preliminarily described in the Draft Requirements, and as will be further defined in the Functional Specifications and shall progress as procedurally described in this Agreement.

**2.10 “User Interface”** shall mean the junction between a user of the Election Night Application and the Election Night System.

### **Article III. SCOPE OF WORK**

**3.01 “Engagement”** Secretary hereby retains Contractor to develop an Application Design for the Secretary’s Election Night System, effective as of the Effective Date defined in Article IV, and Contractor hereby accepts such retention by Secretary.

**3.02 “Acceptance of Engagement”** Contractor will complete the Project and deliver the Components as described in the Specifications.

**3.03 Planning Phase** The first portion of the Project shall be the Planning Phase. The Contractor shall also deliver to the Secretary the Planning Phase Deliverables.

**3.04 Application Design Phase** Concurrent with the development of Project Plan shall be the Application Design Phase. Contractor shall undertake the activities as outlined in the Project Plan Schedule, as developed in the Planning Phase. Contractor shall also deliver to the Secretary the Planning Phase Deliverables.

**3.05 Application Design Parameters** Contractor shall develop the Application Design with the following parameters such that the Election Night Application will:

- (a) Meet the expectations of typical Internet users and will not require any additional software installation;
- (b) Comply with all requirements stated in section 3517.106 and divisions (C)(6)(b) and (D)(6) of section 3517.10 of the Revised Code;
- (c) Be based on the data structures and relationships in the Secretary’s existing databases;
- (d) Comply with Oracle database standards;
- (e) Provide for appropriate authentication procedures.
- (f) Be in accordance with the other requirements listed in Exhibit A including (1) the RSS feed and Dashboard and (2) providing the layered graphics as a deliverable.

**3.06 Installation Phase** Upon completion and Acceptance of the Application, Contractor shall install the Application on Servers owned and designated by the Secretary.

(a) Contractor shall provide an onsite resource for the Installation of the Application.

(b) Contractor shall provide stress testing of the Installed Application by simulating the number of hits expected during election night. Should the initial tests have negative results, Contractor will work with the Secretary's IT Department to arrive at an acceptable solution to allow for this traffic level.

(c) Contractor shall also provide an onsite resource on the day and night of the election, November 8, 2005, to assist the Secretary to troubleshoot the Application, if necessary.

**3.07** In addition to the Planning Phase Deliverables, the Application Design Deliverables, and the Installation, Contractor shall provide timely status reports to Secretary.

**3.08** Design new header graphics and election night page elements. The new header will contain the election Night theme and include scroll functionality.

**3.09** Create navigation link for election night which can be toggled on or off by Secretary personnel. The new election night web pages will be integrated with the Secretary's home page WebSAT content management tool.

**3.10** Create new "Site Elements" to support Election Night functionality.

**3.11** Change results page(s) to pull content from new cascading links (Oracle tables). In addition Contractor will transfer election results pages from General Election site to new Secretary site.

**3.12** Upon completion, Contractor shall install and test all features of the updated election night webpage(s). Contractor will install and test all features and functions of the modifications.

**3.13** Contractor shall provide eight (8) hours of support during election day/night, November 8, 2005.

#### **Article IV. TERM**

**4.01** This Agreement is effective as of the 26<sup>th</sup> day of September 2005. This Agreement will automatically expire on November 10, 2005. Unless this Agreement is terminated or expires without renewal, it will remain in effect until the Services are completed to the satisfaction of the Secretary and Contractor is paid. Satisfaction of the

Secretary shall be judged on a reasonable standard. The current General Assembly cannot commit a future General Assembly to expenditures. The Secretary, however, may renew this Agreement in the next biennium by issuing written or electronic notice to Contractor of the decision to do so. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Services continues.

**4.02** Timeliness of Performance. Contractor understands that prompt performance of all services hereunder is required by Secretary in order to meet its schedules and commitments. In the event that any anticipated or actual delays in meeting Secretary's deadlines or scheduled completion dates are caused by the unacceptable performance of any Contractor employee or any other cause within the reasonable control of Contractor, Contractor shall provide additional temporary personnel, as requested by Secretary and at no charge to Secretary, in order to complete the assignment involved in a timely manner. Neither party, however, shall be responsible for any delays that are not due to such party's fault or negligence or that could not have reasonably been foreseen or provided against.

## **Article V. CERTIFICATION OF FUNDS**

It is expressly understood by the parties that none of the rights, duties or obligations described in this Contract shall be binding on either party until all statutory provisions under the Ohio Revised Code, including but not limited to Section 126.07 of the Ohio Revised Code, have been complied with and until such time as all necessary funds are made available and forthcoming from the appropriate state agencies, and when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that federal funds are used, until such time that the Secretary gives the Contractor written notice that such funds have been made available to the Secretary, by the Secretary's funding source. Notwithstanding the foregoing, by signing this Agreement, the Secretary confirms that sufficient funds are appropriated to compensate Contractor for the services to be provided pursuant to this Contract

## **Article VI. COMPENSATION**

**6.01** In consideration for the promises and performance of Contractor as set forth herein, the Secretary agrees to:

(a) Pay Contractor, upon submission of appropriately detailed and accurate invoices for services performed by Contractor in accordance with this Agreement at the hourly rates as follows:

- i.) Application Developer I \$147.20/hour
- ii.) Application Developer II \$124.20/hour
- iii.) Graphic Designer I \$109.00/hour
- iv.) Project Manager II \$147.20/hour
- v.) Oracle Architect I \$147.20/hour
- vi.) Microsoft Systems Engineer I \$147.20/hour



(b) In no event shall the cost to the Secretary under this contract for services performed as detailed in this Agreement exceed **TWENTY-FOUR THOUSAND ONE HUNDRED FIFTY-FIVE DOLLARS AND 20/100 CENTS (\$24,155.20)**.

**6.02** Any Deliverables shall be accompanied by an appropriately detailed and accurate invoice for services performed and expenses incurred.

**6.03** An invoice is not proper if it contains a defect or impropriety. A proper invoice shall include, but is not limited to, the identification of a purchase number, the date of service and the service provided. The Secretary shall notify Contractor within ten (10) days, in writing, of the defect or impropriety and provide any information necessary to correct the defect or impropriety.

**6.04** Contractor shall forward all Invoices and Deliverables for review and approval to the following location:

Secretary of State of Ohio  
Attn: Dilip C. Mehta, Chief Financial Officer  
PO Box 16366  
Columbus, Ohio 43216

**6.05** Section 126.30 of the Ohio Revised Code is applicable to this Agreement and requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month that equals one twelfth of the rate per annum prescribed in Section 5703.47 of the Ohio Revised Code.

**6.06** Unless expressly provided for elsewhere in this Agreement, Contractor shall be responsible for and assume all office and business expenses that are incurred as a result of the performance of this Agreement.

**6.07** The Secretary is exempt from any sales, use, excise and property tax. To the extent sales, use, excise or any similar tax is imposed on Contractor in connection with the Services, such will be the sole and exclusive responsibility of Contractor, and Contractor will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the services are rendered or a later time.

## **Article VII. RELATED CONTRACTS**

The Contractor shall not enter into other subcontracts for the performance of work for this agreement without prior written approval by the Secretary. All work subcontracted shall be at the expense of the Contractor.

## **Article VIII. CONFLICTS OF INTEREST**

**8.01** No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Contract is being carried out, and who exercises any functions or responsibilities in connection with the review or approval of the understanding or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Secretary in writing. Thereafter, he or she shall not participate in any action affecting the work under this Contract, unless the Secretary shall determine that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

## **Article IX. RIGHTS, IN DATA, PATENTS AND COPYRIGHTS - PUBLIC USE**

**9.01** To the extent the Services performed by Contractor under this Contract result in the creation of a tangible Deliverable(s) and/or Report(s), or the Deliverable(s) and/or Report(s) otherwise constitutes an intellectual property right, the Services shall be deemed a “**work made for hire**” as that term is defined under U.S. Copyright Law, and the Deliverables and/or Property developed pursuant to the terms of this Contract are the sole and exclusive property of Secretary and may be used by it and its subsidiaries and Affiliates in any manner they choose.

**9.02** Title to the Deliverables and/or Property and all applicable rights to copyrights, patents, trade secrets and all other property rights inherent in such Deliverables and/or Property or appurtenant thereto are, shall be and shall remain exclusively in Secretary, and neither Contractor nor its employees shall have any property interest in the Deliverables and/or Property, which are hereby irrevocably recognized by Contractor to belong exclusively to Secretary. Contractor shall have no right to use, license, convey or otherwise transfer the Deliverables and/or Property, to a third party. Unless pursuant to the terms of this Contract and/or any applicable Schedule(s), Contractor shall have no right to retain copies of such Deliverables and/or Property for any reason, and shall return all such Deliverables and/or Property to Secretary upon Secretary’s request.

**9.03** In the event that none or only a part of the Deliverables and/or Property qualify as a “work made for hire”, Contractor agrees to and does hereby assign any and all rights it may have to the copyrights, patents, trade secrets and all other property rights inherent in such Deliverables and/or Property or appurtenant thereto under the applicable law to Secretary, and Contractor agrees to cooperate with the Secretary and execute any

documents deemed necessary by Secretary to effectuate such an assignment and perfection of the Secretary's rights in such Deliverables and/or Property without additional cost to Secretary.

**9.04** Neither the Contractor nor any of the Contractor's employees, agents, subcontractors or assignees shall make a disclosure for the purpose of securing a patent or other proprietary interest in the United States or any other country for any of the Deliverables unless such disclosure is approved in writing by the Secretary prior to application for the patent. In the event that such patent or other proprietary interest is obtained, the Contractor shall, at the request of the Secretary, provide the Secretary written or electronic authorization for the Secretary and any other person, agency, or instrumentality contributing financial support to the work contemplated hereunder to make use of the subject of the said patent or other proprietary interest disclosure without payment thereof.

**9.05** Contractor acknowledges that the Secretary may make any Deliverables freely available to the general public.

## **Article X. CONFIDENTIALITY**

**10.01** The Secretary may disclose to the Contractor written material or oral or other information that the Secretary treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the Secretary delivers to the Contractor will remain with the Secretary. The Contractor agrees to treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the Secretary, or individuals or organizations about whom the Secretary keeps information. By way of example and by no means by way of limitation, information should be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. Such also includes police and investigative records, files containing personal information about individuals or employees of the Secretary, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient or similar privilege may apply, and any documents or records expressly excluded by Ohio law from public records disclosure requirements.

**10.02** The Contractor agrees not to disclose any Confidential Information to third parties and to use it solely to do the Project. The Contractor will restrict circulation of Confidential Information within its organization and then only to people in the Contractor's organization that have a need to know the Confidential Information to do the Project. The Contractor will be liable for the disclosure of such information whether the disclosure is intentional, negligent or accidental, unless otherwise provided below.



**10.03** The Contractor will not be liable for any unintentional disclosure of Confidential Information that results despite the Contractor's exercise of at least the same degree of care as it normally takes to preserve and safeguard its own secrets, except when the Contractor's procedures are not reasonable given the nature of the Confidential Information or where the disclosure nevertheless results in liability to the Secretary.

**10.04** Subject to Article XII, Termination, of this agreement, the Contractor will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the Contractor will cause or have caused all of its employees who have access to any Confidential Information to execute a confidentiality agreement incorporating obligations the same as those in this Article.

**10.05** The Contractor's obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the Contractor's possession prior to disclosure by the Secretary, and such was received by the Contractor without obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the Secretary; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor: (a) notifies the Secretary of such order immediately upon receipt of the order, and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Contractor will return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract

**10.06** The Contractor may disclose Confidential Information to its subcontractors on a need-to-know basis, but they will be obligated to the requirements of this Article.

## **Article XI. USE IN ADVERTISING OR MARKETING MATERIAL**

**11.01** The Contractor shall not identify, without prior written or electronic approval (which will not be unreasonably withheld), the Secretary in any of the Contractor's advertising or marketing material, sales presentations, or scholarly papers or presentations. Secretary shall not identify, without prior written or electronic approval (which shall not be unreasonably withheld), the Contractor in any of the Secretary's advertising or marketing material, sales presentations, scholarly papers or presentations, or for any other reason.

## **Article XII. TERMINATION PROVISIONS**

**12.01** An event of default (an "Event of Default") shall be deemed to occur if (i) the Contractor or Secretary fails to perform its obligations under this Contract otherwise

breaching this Contract, (ii) a petition in bankruptcy (or similar proceedings) has been filed by or against the Contractor, such petition is valid and initiated in good faith, and such petition has not been dismissed within sixty (60) days of the initial filing or (iii) the Contractor or Secretary violates any law or regulation that would have a material adverse effect upon the eGov project.

**12.02** If an Event of Default pursuant to Section 10.01(i) or (iii) occurs, the defaulting party will cure such Event of Default within thirty (30) days of receipt of written notice of such Event of Default from the non-defaulting party, provided the Event of Default is curable. If the defaulting party fails to cure the Event of Default within such thirty (30) day period or if the Event of Default is not one that is curable within such time period, the non-defaulting party will have the right to terminate this Contract by giving the written notice set forth in Section 10.03. The Secretary and Contractor may also terminate this Contract in the case of breaches by the other party that are cured within thirty (30) days but are persistent. "Persistent" in this context means that one party has notified the other party in writing of its failure to meet any of its obligations three (3) times. After the third notice, either party may terminate this Contract without a cure period if the other party again fails to meet any obligation by giving the written notice set forth in Section 10.03. The three (3) notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than thirty (30) days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

**12.03** If the conditions for termination outlined in Section 12.02 exist, the non-defaulting party may terminate this Contract for cause upon thirty (30) days written notice. If the Secretary delivers such written notice, Contractor may continue to perform under this Contract for a maximum of forty (40) hours per week during the thirty day period.

**12.04** The Secretary may also terminate this Contract (i) for its convenience and without cause, (ii) if the Ohio General Assembly fails to appropriate funds for any part of the Project, or, (iii) if a third party is providing funding for the Project, such third party fails to release any Project funds, by delivering written notice to the Contractor. The notice of termination will be effective upon receipt.

**12.05** After receipt of a notice of termination, the Contractor will prepare and deliver to the Secretary a report that details the work completed to date, the percentage of the project's completion, any costs incurred in doing the project to that date, and any Deliverables completed or partially completed but not delivered to the Secretary. The Contractor will also deliver all the completed and partially completed Deliverables to the Secretary with its report. If Contractor is given notice by the Secretary that delivery in that manner would not be in the Secretary's interest, then the Contractor and the Secretary will establish a mutually agreeable alternative form of delivery.

**12.06** If the Secretary terminates this Contract for cause, it will be entitled to cover for

the Project by using another contractor on such commercially reasonable terms as it and the covering contractor may agree. The Contractor will be liable to the Secretary for all costs related to covering for the Project to the extent that such costs, when combined with payments already made to the Contractor for the Project before termination, exceed the costs that the Secretary would have incurred under this Contract based upon the scope of the project on the date of the notice of termination. This shall be the Secretary's exclusive remedy for any such default by Contractor. Contractor shall not be liable for any such costs if the scope of the work of the project is changed. Notwithstanding the foregoing, the Contractor shall not be liable for any failure of the Secretary or any other person to keep the costs of the applicable projects within the proposed budget for such project(s).

**12.07** If the Secretary terminates this Agreement pursuant to Section 12.03, the Contractor will be entitled to compensation for any work on the project(s) that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of such termination and will be available to the Contractor only once the Contractor has submitted a proper invoice for such.

**12.08** Any default by the Contractor or one of its subcontractors will be treated as a default by the Contractor and all of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the Secretary for any liability to them. Each subcontractor will hold the Secretary harmless for any damage caused to him or her from a suspension or termination. They will look solely to the Contractor for any compensation to which they may be entitled.

**12.09** The Contractor may terminate this Contract for its convenience and without cause by giving the Secretary a thirty (30) day notice of termination.

### **Article XIII. WARRANTIES**

Contractor hereby warrants and represents to Secretary as follows:

**13.01** Each of Contractor's employees assigned to perform services under this Contract shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all work will be performed in accordance with this Contract.

**13.02** Secretary shall receive free, good and clear title to all materials, deliverables and products developed under this Contract.

**13.03** Each and every deliverable, including software deliverables, contemplated by this Contract shall conform to the specifications for same as mutually agreed to in writing by Secretary and Contractor.

**13.04** Secretary hereby warrants and represents to Contractor that each of Secretary's

employees and consultants assigned to perform services on projects referenced in a Statement of Work shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all work will be performed by such persons in accordance with this Contract.

#### **Article XIV. INDEMNITY AND INSURANCE**

**14.01** Contractor shall indemnify, defend and hold Secretary, its officers, directors and employees harmless from and against any and all liabilities, obligations, losses, claims, damages, costs, charges or other expenses of any kind (including, but not limited to, reasonable attorneys' fees and legal costs) (collectively, "Claims") which arise out of or result from any breach or alleged breach of any representation or warranty made by Contractor hereunder or any Claim that any of the Services or any portion thereof violates any copyright, patent, trademark, trade secret, license, or other proprietary right of any third party. Contractor shall reimburse the State for any judgments for infringement of patent or copyright rights. Contractor shall also indemnify, defend and hold Secretary, its officers, directors and employees harmless from and against any and all Claims for personal injury or damage to property arising out of the furnishing, performance or use of the Services provided hereunder as well as any Claim for payment of compensation or salary asserted by an employee of Contractor. Secretary shall provide Contractor with written notice of any Claim which Secretary believes falls within the scope of this Article XII. Secretary expressly reserves the sole right, at Secretary's option, to control the defense of any such Claim and, in such event, in addition to Contractor's other obligations in this Article XII, Contractor agrees to provide reasonable assistance to Secretary, at Contractor's expense, in the defense of any such Claim. Contractor shall not settle any Claim without the prior written consent of Secretary.

**14.02** Contractor shall procure and maintain for itself and its employees all insurance coverage(s) as required by federal or state law, including workers' compensation insurance. Contractor also agrees to maintain One Million Dollars (\$1,000,000.00) combined single limit general liability insurance. Contractor shall furnish to Secretary a certificate of insurance evidencing such coverage and naming Secretary as additional insured. Said certificate shall include a provision whereby notice must be received by Secretary thirty (30) days prior to coverage cancellation by either Contractor or Insurer.

#### **Article XV. COMPLIANCE WITH LAW**

**15.01** The Contractor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. Contractor accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions and any and all other taxes or payroll deductions required for all employees engaged by Contractor in the performance of the work authorized by this Contract. The Secretary shall not be liable for any taxes under this Contract.

**15.02** Secretary agrees that it shall, and shall cause all of its employees and consultants



to, comply with all applicable federal, state and local laws in the conduct of their work associated with any project referenced in a Statement of Work.

#### **Article XVI.           LIMITATION OF LIABILITY**

**16.01** IN NO EVENT SHALL SECRETARY BE LIABLE, IN LAW OR EQUITY, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF SECRETARY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SECRETARY'S AGGREGATE LIABILITY TO CONTRACTOR FOR ANY AND ALL MATTERS RELATED TO THIS AGREEMENT OR OTHERWISE EXCEED THE TOTAL OF PAYMENTS DUE AND OWING TO CONTRACTOR BY SECRETARY HEREUNDER. THE LIMITATIONS IN THIS ARTICLE APPLY TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF AGREEMENT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

#### **Article XVII.          CHANGES OR MODIFICATIONS**

**17.01** Any changes or modifications to this Contract shall be made and agreed to by both parties, in writing, and in advance. No amendment or modification to this Contract shall be valid unless and until accepted and signed by the Assistant Secretary of State, Monty Lobb, or the Secretary of State, J. Kenneth Blackwell. No other person has authority, express or implied, to accept any amendment or modification.

#### **Article XVIII.         GOVERNING LAW; VENUE AND JURISDICTION**

**18.01** This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio, without reference to the choice of law provisions thereof.

**18.02** The parties hereto hereby consent to the exclusive jurisdiction and venue of the Ohio Court of Claims for any action that may be brought in connection with this Agreement other than a cross-claim for indemnification brought in response to a claim of infringement filed in another court. In the case of a cross-claim for indemnification, Contractor agrees to be subject to the jurisdiction and venue of the court in which the infringement claim is brought, provided that Secretary is also subject to jurisdiction and venue in that court.

#### **Article XIX.           RELATIONSHIP OF PARTIES**

**19.01** The relationship between Contractor and Secretary under this Contract shall be that of independent contractors. Nothing in this Contract shall be construed to create the relationship of employer and employee, a joint venture, a partnership, or association



between Contractor and Secretary.

**Article XX. REPRESENTATIONS OF THE PARTIES**

**20.01** Each party to this Contract represents to the other party that it has full power and authority to enter into this Contract and the execution, delivery and performance of this Contract do not violate the terms of any other Contract to which it is a party; or any law or regulation to which it is subject.

**Article XXI. CERTIFICATION OF COMPLIANCE WITH OHIO ETHICS AND ELECTION LAW REQUIREMENTS FOR NONCOMPETITIVE BID CONTRACTS**

**21.01** Contractor by signature on this Contract certifies that Contractor is currently in compliance and will continue to adhere to the requirements of Ohio Ethics Laws as provided by Sections 102.03 and 102.04 of the Ohio Revised Code.

Contractor by signature on this Contract certifies that, as applicable to the Contractor, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party, has made as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Secretary of State of Ohio or to his campaign committees.

**Article XXII. MISCELLANEOUS**

**22.01** The rights and responsibility arising under this Agreement may not be assigned or delegated by either party hereto in whole or in part, without the prior written approval of the other party hereto.

**22.02** Contractor affirmatively represents and warrants to the Secretary that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken the appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. Contractor agrees that if this representation and warranty is deemed to be false, the Contract shall be void *ab initio* as between the parties to this Contract, and any funds paid by Secretary hereunder shall be immediately repaid to Secretary, or an action for recovery may be immediately commenced by Secretary for recovery of said funds.

**22.03** The Contractor may subcontract the work under this Contract with the prior written approval by the Secretary.

**22.04** If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any other provision of this Agreement.

**22.05** The parties agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, including any employee, vendor, or customer of either party, and that there are no third party beneficiaries as to this Agreement or any part or specific provision of this Agreement.

**22.06** Right to Hire. Unless specified otherwise in an addendum to or work agreement under this agreement, Contractor agrees that Secretary may discuss employment opportunities with Contractor Employees. Secretary shall have the right to hire said Employees without any compensation to Contractor. Secretary may hire the employee through any manner they deem appropriate including but not limited to hiring as a direct employee, contracting directly with the individual, contracting for the individual through another consulting firm, and the like. In the event Employees of Contractor accepts such and employment arrangement with Secretary, Contractor will release the employee to Secretary within ten (10) business days. This includes waiving all rights under any non-compete, non-solicitation, or other contract clauses Contractor has with said Employees that may conflict with this right to hire.

**22.07** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**22.08** No waiver of any breach or of any of the terms or provisions of this Agreement shall be, or be construed to be, a waiver of any preceding or succeeding breach of the same or any other provision hereof.

**22.09** The Contractor shall also deliver, assign, transfer and convey to the State all rights, title and interest to all documents, data, materials, information and other materials and property prepared or developed or created under or in connection with this Contract.

**22.10** Any notices required or permitted by this Agreement shall be sent by courier facsimile, or by registered or certified mail with return receipt requested. Notices shall be deemed given upon personal delivery to the addressee, or three days after the date of mailing if sent by registered or certified mail.

Notices to Secretary shall be sent to:

The Office of the Ohio Secretary of State  
180 East Broad Street, 15<sup>th</sup> Floor  
Columbus, Ohio 43215

Facsimile: (614) 644-0649

Notices to Contractor shall be sent to:

GovTech Solutions, LLC  
302 North Cleveland-Massillon Road  
Akron, Ohio 44333

Facsimile: (330) 665-3486

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates appearing below.

Secretary:

GovTech:

By: Monty Lobb  
Monty Lobb

By: Randy Cole

Title: Assistant Secretary of State

Title: President

Date: 9/29/05

Date: September 26, 2005

34-1921588

FEDERAL TAX I.D. NUMBER

## EXHIBIT A

### **Project Description:**

Through the Election Night Integration project, GovTech Solutions will provide a navigation “bubble” for Election Night functionality with the ability to toggle it on and off by SOS personnel. This area would function similarly to the existing Business Services, Elections Candidates & Voting, Licensing & Certifications and Program Initiatives navigation areas. All menu items and fly-outs will be controlled by OH SOS personnel using the existing WebSAT functionality with the data stored in the same Oracle database. A new Home Links Group will also be added for Election Night. This home page “bubble” will provide the same redundancy as the existing four website categories and will be controlled using the existing Home Links area in WebSAT.

A new page banner will also be provided for the Election Night back pages as well as the Home page, containing an Election Night 2005 graphic. In addition, the election scroll functionality used during the 2004 elections will replace the globe graphic at the top of the Home page and the Election Night back page. Functionality in WebSAT will be provided to turn on and off all the features before and after the Election by OH SOS personnel. In addition to these changes, GovTech will transfer the Election Results pages from the 2004 General Election site to the new OH SOS site. GovTech Solutions will also provide 8 hours of customer support during the day of the November 8, 2005 election.

### **Project Scope:**

- Design new header graphics and election night page elements
- Create new Navigation "bubble" for Election Night which can be toggled on and off by user
- Create new "Site Element" to support Election Night functionality
- New header with Election Night theme - Including Scroll functionality (back & home page)
- Add Home Page Bubble for Election Night - Home Links WebSAT functionality
- Change results pages to pull content from new cascading links (Oracle Tables)
- Transfer Election Results pages from General Election site to new SOS site
- Testing and Installation all feature and functionality modifications
- Provide 8 hours of technical support during election day (November 8, 2005)